

REMARKS

Claims 10 to 30 are currently pending in the present application.

In view of the following remarks, it is respectfully submitted that the pending claims are allowable, and reconsideration is respectfully requested.

Claims 10 to 13, 15, 16, 19, 20, and 28 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application No. 2003/0058337 A1 ("Tanaka").

To reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

Independent claim 10 is to a device for providing driving assistance *in which the parallel parking driving instructions provide a driver with a driving zone situated between two trajectories which are calculated in such a way that the vehicle can be moved within the driving zone*. The specification of the present application clearly distinguishes between pilot lines and a driving zone. For example, it specifically discloses that a "driver attempts to follow these pilot lines as accurately as possible." (*Specification*, page 1, lines 23 to 24.) Thus, for pilot lines, a driver is instructed to follow a particular trajectory. Following such a particular trajectory may lead to detrimental results, as explained in the specification. In contrast, in a driving zone, instead of a particular trajectory which the driver is supposed to follow, a driver may "arbitrarily

drive and steer and thus select any trajectory between the two delimiting trajectories without colliding with an obstacle.” (Id. page 2, lines 13 to 16, emphasis added). It is further explained that to “remain in a safe zone, however, the driver may not leave the zone delimited by the trajectories.” (Id. at lines 17 to 19 (emphasis added)).

The Tanaka reference does not identically disclose (nor even suggest) the above-identified claim features, as provided for in the context of the claimed subject matter. Any review of the cited sections relied upon by the Final Office Action (or even the entire Tanaka reference) make plain that there is not even a discussion of a **driving zone**. Instead, the Tanaka reference merely refers to “an anticipated course of the one’s own vehicle.” (Tanaka, page 4, paragraph [0054]). Indeed, trace R of Fig. 1 which is the Final Office Action asserts discloses a driving zone, is referred to by Tanaka as an “anticipated path.” (Id.). Thus, even if the Tanaka reference did refer to a driver’s anticipated path, nothing in the Tanaka reference identically discloses (nor even suggests) a **driving zone** – outside of which the vehicle may collide, as provided for in the context of the presently claimed subject matter.

In the Response to Arguments section of the Final Office Action, it appears that the Office concedes that “Tanaka discloses a display that depicts the *anticipated course R of the vehicle*... Tanaka discloses that the system calculates *parking path S* so as to avoid a collision with an obstacle.” (Final Office Action of August 4, 2009, page 18, emphasis added). Applicants agree with the Final Office Action that Tanaka discloses an *anticipated course* and that the system calculates a *parking path* as the Office. Applicants don’t understand, however, how the Office comes to the conclusion that “a *parking path defines a zone* situated between two boundaries” (id., emphasis added) based on the above assertions. As provided in the foregoing discussion, Tanaka discusses an *anticipated path* -- and not a *driving zone*. An anticipated path is wholly different from a zone.

It is respectfully submitted that the Office Actions to date essentially ignore the proper meaning of the term “zone” which is to be understood in view of the specification. (See *In re Weiss*, 26 U.S.P.Q.2d 1885, 1887 (Fed. Cir. 1993) (when interpreting a claim term or phrase, one must “look to the specification for the meaning ascribed to that term”; Board reversed) (unpublished decision); *In re Okuzawa*, 190 U.S.P.Q. 464, 466 (C.C.P.A. 1976) (“claims are not to be read in a vacuum, and limitations therein are to be interpreted in light of the specification in giving them their broadest *reasonable* interpretation”; Board reversed; emphasis in original) (citing *In re Royka*, 180 U.S.P.Q. 580, 582-83 (C.C.P.A. 1974) (claims are “not to be read in a vacuum and while it is true that they are to be given the broadest reasonable interpretation during

prosecution, their terms still have to be given the meaning called for by the specification of which they form a part”; Board reversed; emphasis in original); and *In re Rohrbacher*, 128 U.S.P.Q. 117, 119 (C.C.P.A. 1960) (an “applicant is his own lexicographer and words used in his claims are to be interpreted in the sense in which they are used in the specification”; Board reversed)).

It is respectfully submitted that this is exactly the case here since contrary to the foregoing law, the Final Office Action simply reflects its own unreasonable reading of the term “zone” without even making a distinction with the term “path,” as used in the specification.

As explained above and disclosed in the specification, a driving zone provides a driver more flexibility and safety. For example, a zone allows a driver to “*arbitrarily drive and steer and thus select any trajectory between the two delimiting trajectories.*” (*Specification*, lines 17 to 19, emphasis added). In stark contrast, in Tanaka, one must follow “an *anticipated course* calculated from a steering rudder angle.” (*Tanaka*, page 1, paragraph [0009], emphasis added). Indeed, the course R of Fig. 1, which the Final Office Action alleges to disclose a *zone*, is described by Tanaka as “an anticipated course R” which is “calculated based on the steering rudder angle....” (*Id.*, page 1, paragraph [0054]). A driving zone, as provided in the context of the claimed subject matter, is not identically disclosed, nor suggested, by Tanaka.

Accordingly, claim 10 is allowable, as are its dependent claims 11 to 13, 15, 16, 19, and 20.

Independent claim 28 is to a driving aid device for parking a vehicle *in which the driving instructions indicate to the driver a driving range between two trajectories which designate two different determined routes.*

The Tanaka reference does not identically disclose (nor suggest) the above identified claim features. In particular, nothing in the Tanaka reference identically describes a *driving range*, as provided for in the context of the presently claimed subject matter, since at best, the Tanaka reference may merely refer to an *anticipated path* of the driver – and not a driving range.

Furthermore, it is respectfully submitted that the Tanaka reference does not identically disclose (nor suggest) the claim feature of *two different determined routes*, since any review of the Tanaka reference makes plain that *two different determined routes* are not even discussed. In Tanaka, path S, as to every time it is used with respect to Figures 1 to 3, is described by Tanaka as a single parking path -- and not two different determined routes as asserted by the Final Office Action. For example, in reference to Fig. 4, Tanaka states that “the

parking path S from the current position of one's own vehicle to the parking target point is calculated." (Tanaka, page 4, paragraph [0058]). Notably, parking path S is described throughout the Tanaka reference and every time it is used in the singular form. Accordingly, Tanaka does not identically disclose (nor suggest) two different determined routes, as provided for in the context of claim 28.

As further regards the anticipation rejections, as explained as to claim 10, it is respectfully submitted that the Office may not ignore the reasonable interpretation of the terms "driving range" and "two different determined routes," as provided for in the context of the claimed subject matter -- and as would be understood by a person having ordinary skill in the art based on the specification. (See In re Weiss, 26 U.S.P.Q.2d 1885, 1887 (Fed. Cir. 1993) (when interpreting a claim term or phrase, one must "look to the specification for the meaning ascribed to that term"; Board reversed) (unpublished decision).

For at least the reasons above, claim 28 is allowable. It is therefore respectfully requested that the anticipation rejections be withdrawn.

With regard to paragraph six (6), claims 14, 21, 23, 24, and 27 were rejected under 35 U.S.C. 103(a) as unpatentable over the combination of the Tanaka reference in view of U.S. Patent No. 6,919,917 (the "Janssen" reference).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art

reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 14, 21, 23, 24, 26, and 27 ultimately depend from claim 10, and are therefore allowable for essentially the same reasons as claim 10, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference -- which is not prior art as to the present application.

Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tanaka reference in view of U.S. Patent no. 6,226,592 B1 (the “Luckscheiter” reference).

Claim 17 depends from claim 10, and is therefore allowable for essentially the same reasons as claim 10, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference-- which is not prior art as to the present application.

Claim 18 was rejected und 35 U.S.C. § 103(a) as being unpatentable over the Tanaka reference in view of U.S. Publication No. 2003/0045973 A1 (the “Okamoto” reference).

Claim 18 depends from claim 10, and is therefore allowable for essentially the same reasons as claim 10, since the secondary reference does not cure -- and is not asserted to cure -- the critical deficiencies of the primary reference-- which is not prior art as to the present application.

Claims 22 and 25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tanaka reference in view of the Janssen reference and further in view of the Luckscheiter reference.

Claims 22 and 25 ultimately depend from claim 10, and are therefore allowable for essentially the same reasons as claim 10, as presented, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference-- which is not prior art as to the present application.

Claims 29 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the Tanaka reference in view of the Janssen reference, further in view of the Luckscheiter reference and in further view of the Okamoto reference.

Claims 29 and 30 ultimately depend from claims 28 and 10 accordingly, and are therefore allowable for essentially the same reasons as their independent claims, since the secondary references do not cure -- and are not asserted to cure -- the critical deficiencies of the primary reference-- which is not prior art as to the present application.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 10 to 30 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all of claims 10 to 30 are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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